

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-216685.2**DATE:** December 4, 1984**MATTER OF:** MTR, Inc.--Request for Reconsideration**DIGEST:**

1. Request for reconsideration of decision holding that protester has stated no basis of protest is denied where protester has not shown that prior decision is erroneous.
2. Protest not filed within 10 working days of the date the basis for protest was known is untimely.

✓ MTR, Inc. requests reconsideration of our decision MTR, Inc., B-216685, Oct. 23, 1984, 84-2 CPD ¶ ____, in which we summarily denied its protest concerning the Army's rejection of MTR's bid as mistaken under invitation for bids DAAA22-84-B-0161.

We denied the protest because on its face it established no basis for us to conclude that the agency acted improperly. We pointed out that MTR had not indicated in its protest where it believed the contracting officer's decision was in error. MTR simply appeared to be unwilling to acknowledge that an error had been made; we stated that a bid must be rejected where it is apparent that a mistake has been made despite the bidder's denial of mistake. Mullins Protective Services, Inc., B-208674, ✓ Dec. 23, 1982, 82-2 CPD ¶ 561.

MTR states that it was unaware that protests could be decided summarily and argues that, had a full report been received from the contracting activity, the record would have supported its protest. MTR maintains that its bid was not mistaken and states that the specifications were defective because they failed to specify the extent of concrete and reinforcing steel required. MTR also says that one of the contracting officer's findings, which concerned the pricing of a special concrete mixture, was in error because MTR's concrete supplier stated in its quotation that it would supply that special mixture. Further, MTR contends that the contracting officer also was incorrect

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regarding the inclusion of dumping and other miscellaneous costs in its bid because they were also included in the concrete supplier's quotation. MTR admits that the contracting officer was correct in determining that overhead cost was not broken out on its work sheets, but asserts that this cost was included in its profit margin.

First, concerning the summary denial of the protest, our Bid Protest Procedures require that a protest state the grounds of protest and that the protester fully support the protest to the extent feasible. 4 C.F.R. § 21.1(2) (1984). Also, the procedures state at section 21.3(g) that:

"Notwithstanding any other provision of this § 21.3, when on its face a protest is clearly without legal merit . . . the protest shall be summarily denied . . . without a report from the agency. . . ."

Our procedures thus, clearly provide for summary denial of a protest in the appropriate circumstances.

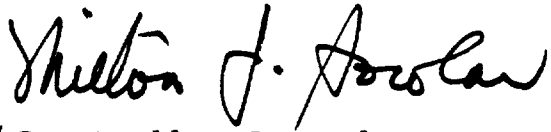
Second, MTR has advanced no basis that would justify allowing reconsideration. A party must establish in its request for reconsideration that a prior decision contains a misunderstanding of fact or error of law. 4 C.F.R. § 21.9. Here, the decision turned on our conclusion that MTR's protest documents did not establish any basis for protest. On reconsideration, MTR maintains that the IFB was defective because it did not adequately state the Army's requirements. MTR also attempts to explain where it thinks the contracting officer was in error. These assertions, however, do not concern the correctness of our prior decision, which turned on MTR's failure at that time to establish any grounds for protest. MTR has therefore not provided a basis for reconsidering our decision. Le Prix Electrical Distributors, Ltd.--Request for Reconsideration, B-213050.2, Oct. 25, 1983, 83-2 CPD ¶ 500.

Alternatively, if we were to treat the request for reconsideration as a new protest, we would dismiss it as untimely. Our procedures require that protests be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2). MTR states that it knew of the

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basis of protest by September 27. It filed its latest submission with our Office on November 5. The grounds of protest now asserted therefore are untimely, as independent bases of protest must be individually asserted in a timely manner. See, Weaver Shipyard & Drydock, Inc.--Request for Reconsideration, B-210652.2, Apr. 5, 1983, 83-1 CPD 367. ✓

The request for reconsideration is denied.


for Comptroller General
of the United States